

REMARKS

This amendment is responsive to the Office Action mailed March 4, 1997 setting a three month shortened statutory period for response expiring on June 4, 1997. The claim amendments set forth above have been made for clarity and to more clearly and succinctly recite applicants' invention and are not made to overcome prior art. For the reasons set forth below, applicants submit that this application is now in condition for allowance.

In the Office Action, claims 26 through 41 were indicated as pending in the application. However, the preliminary amendment filed concurrently with this continuing application canceled claims 2-25 and added claims 26 through 41. Accordingly, claim 1 remained pending in this application at the time of the Office Action. This amendment cancels original claim 1.

Paragraphs 1 and 2 of the Office Action are unclear but apparently assert a non-statutory obviousness type double patenting rejection of claims 26-41 over claims 1-20 of US Patent No. 5,511,897. The examiner states that the basis for this rejection is that claims 26-41 are broad enough to encompass the method and kit claimed in the '897 patent. Applicants will timely submit a terminal disclaimer disclaiming that part of the patent to issue on this application that would otherwise survive beyond expiration of Patent No. 5,511,897, upon an indication of allowability of at least one claim in the present application.

Claims 26-41 were also rejected under 35 USC §112 as containing subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors had possession of the claimed invention. because the specification did not convey a method of sealing a manhole riser or a catch basin using only a single elastomeric band. Applicant respectfully requests that the Examiner reconsider and withdraw this rejection. Throughout the specification, Applicant recites specific preferred embodiments of the invention and clearly does not state that the described examples are the only embodiments contemplated as the invention. Each of the embodiments shown includes an upper band and a lower band. However, it is obvious that, if the height of the stack is short enough to accommodate only one band, one band would be used. For example, if, in Figure 1,

there were only two adjusting rings, only one band 30 would be used. Page 10 of the specification, lines 19-25, states:

A first ring of material 30 is pulled over the manhole riser 10, and pulled down to the bottom. The top of the first band must reach the top of the top adjusting ring. If the bottom band does not reach the top adjusting ring, and (sic) extension band must be used. Preferably, adhesive is previously applied to the inside, and a release liner is pulled off the band 30. (emphasis added)

Thus the present application explicitly states that potentially only a single band may be necessary. This language reasonably conveys to one skilled in the relevant art that the inventors had possession of the claimed invention at the time of filing the application. Applicants in this present application, are merely claiming the obvious single band embodiments included explicitly and by implication in the original disclosure. The Examiner apparently recognized this obvious variant in asserting an obviousness type double patenting rejection in paragraphs 1 and 2 of the Office Action. Accordingly, reconsideration and withdrawal of the rejection under 35 USC 112 is respectfully requested.

Finally, the examiner rejected claims 26 through 41 under 35 USC 103(a) over Ditcher patent No. 4,540,310. The Examiner stated that the Ditcher patent teaches a method of sealing a manhole riser by placing an elastomeric band over the manhole riser. The Examiner is respectfully requested to reconsider this interpretation and withdraw this rejection. The Ditcher patent teaches sealing a manhole riser by installing an internal plastic sleeve and then placing the adjustment rings around the sleeve. The Ditcher patent also discloses providing a separate flange or band water stop 54 at the base of the sleeve 34 which is embedded in or rests on top of the concrete cone or riser 24. This band 54 may be coated with an adhesive to seal the elastomeric band to the plastic sleeve 34. It is not coated with an adhesive to seal the band to the riser 24. The seal is provided by the band being compressed between the riser and the adjustment rings. The Examiner stated that provision of an adhesive layer on the sealing band of Ditcher to fasten the material to the manhole would be obvious. This application of an adhesive would be redundant to the gasket function of the band between the riser and the adjustment rings. Accordingly, if anything, the

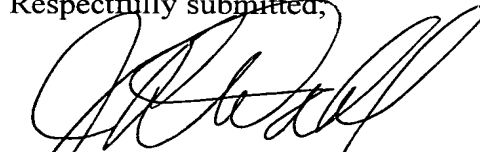
Ditcher reference teaches away from providing an adhesive on the elastomeric sealing band surface contacting the riser or the adjustment rings as in Applicants' claimed invention.

The Ditcher reference also does not suggest placing the band over the adjustment rings and adhesively sealing a band or sleeve to the riser as is claimed in applicant's claims 26-41. In contrast to Ditcher, Applicants' invention is a unique method and kit for sealing manholes and a unique method and kit for sealing catch basins utilizing an external band of elastomeric material placed over the adjustment rings and adhesively sealing the band to the outer surface of the manhole or catch basin riser. This is clearly different from Ditcher and therefore the Examiner is respectfully requested to withdraw the rejection under 35 USC 103.

The prior art simply does not suggest or disclose a manhole or catch basin sealing kit having a band of elastomeric material with an adhesive on an interior surface of the band as set forth in the amended claims. The prior art also does not suggest or disclose a method of sealing a manhole riser or catch basin as set forth in the amended claims. Applicant therefore submits that all of the now pending claims are allowable and the application is now in condition for allowance. Accordingly, prompt reconsideration and passage of the application to issue are earnestly solicited.

Should the Examiner have any remaining questions or unresolved concerns, he is encouraged to contact the undersigned by telephone at the earliest opportunity to resolve such concerns.

Respectfully submitted,



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